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Attorney for Plaintiff  
 DON BORG

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

DON BORG,	)	No. C 07-03149-JW
	)	
Plaintiff,	)	SUPPLEMENTAL OPPOSITION TO
	)	DEFENDANTS' MOTION TO
vs.	)	DISMISS/MOTION FOR SUMMARY
	)	JUDGMENT
PRINCIPAL LIFE INSURANCE CO.,	)	
TARGET CORPORATION and DOES 1	)	DATE JUNE 9 2008
through 20, inclusive,	)	TIME 9 AM
	)	
Defendants.	)	
	)	
	)	
	)	
	)	
	)	
	)	

PLAINTIFF OPPOSES THE DEFENDANTS' MOTION TO DISMISS/MOTION FOR  
 SUMMARY JUDGMENT AND ASKS THE COURT TO CONSIDER THIS  
 SUPPLEMENTAL OPPOSITION, EVEN THO THE COURT WILL NOT CONTINUE THE  
 HEARING DESPITE THE PLAINTIFF'S EX PARTE APPLICATION TO DO SO.

PLAINTIFF ASKS THE COURT TO , CONSISTENT WITH FRCP RULE 56, TO GIVE  
 PLAINTIFF A CHANCE TO DO DISCOVERY ON THE FRAUD ISSUE (FRAUD IN THE  
 INDUCEMENT OF PLAINTIFF TO SIGN THE SETTLEMENT AGREEMENT WITH

1 DEFENDANT).

2  
3 IT HAS BEEN UNCLEAR WHETHER PLAINTIFF HAS ANY RIGHT TO COMMENCE  
4 DISCOVERY AT THIS TIME. IT IS UNFAIR FOR DEFENDANTS TO FILE A MOTION  
5 FOR SUMMARY JUDGMENT (MSJ) AS AN "ALTERNATIVE" TO A RULE 12B  
6 MOTION. WHY? BECAUSE MSJ CONTEMPLATES A CHANCE FOR DISCOVERY,  
7 WHILE RULE 12 DOES NOT., SO IN EFFECT BY FILING A "DUAL" MOTION UNDER  
8 RULES 12/56. THE DEFENDANTS HAVE FILED A MSJ WHILE PREVENTING  
9 PLAINTIFF FROM CONDUCTING DISCOVERY ON THE VERY FRAUD ISSUE THAT IS  
10 THE CRUX OF THE MATTER.

11 IT WILL BE NOTED THAT IN THE JOINT CMC STATEMENT FILED BY THE PARTIES,  
12 THE PLAINTIFF DID ASK THE COURT FOR LEAVE TO CONDUCT LIMITED  
13 DISCOVERY ON THE FRAUD ISSUE FORTHWITH. NO SUCH ORDER CAME DOWN,  
14 HOWEVER.

15  
16 IN FAIRNESS TO PLAINTIFF, AND IN FURTHERANCE OF THE COURTS' POLICIES TO  
17 LET MATTERS BE DECIDED ON THEIR MERITS, WE DO ASK TO ALLOW PLAINTIFF  
18 TO CONDUCT DISCOVERY ON FRAUD PRIOR TO RULING ON THE MSJ/MOTION TO  
19 DISMISS.

20  
21 WE DO BELIEVE THE AMENDED COMPLAINT ON ITS FACE DOES STATE A VALID  
22 CAUSE OF ACTION FOR FRAUD, AND THE COURT SHOULD NOT LOOK BEYOND  
23 THE PLEADINGS INTO THE MERITS WITHOUT FIRST GIVING THE PARTIES A  
24 CHANCE AT DISCOVERY ON THE FRAUD ISSUE.

25  
26 WE ASK THE COURT TO CONSIDER THESE MATTERS.

27 DATED: JUNE 6 2008

28 RESPECTFULLY SUBMITTED,

1 \_\_\_\_\_/S/

2 STANLEY G. HILTON

3 ATTORNEY FOR PLAINTIFF